IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

WP(C).No. 5474 of 2004(B)

PETITIONER:

GOKULAN E.K., KRISHNA KAMAL,
F7, PILLAVEEDU NAGAR, KESAVADASAPURAM,
THIRUVANANTHAPURAM, ASST.EXE.ENGINEER(RTD),
AGRICULTURAL UNIVERSITY, TRICHUR.

BY ADV. DR.K.P.KYLASANATHA PILLAY
SRI.ARUN.B.VARGHESE
SRI.T.P.DEYANANTHAN
SMT.SREEDEVI KYLASANATH

RESPONDENTS:
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1. **THE PRINCIPAL SECRETARY,**
   HIGHER EDUCATION DEPARTMENT, GOVERNMENT
   SECRETARIAT, THIRUVANANTHAPURAM.

2. **THE REGISTRAR, AGRICULTURAL UNIVERSITY,**
   VELLANIKKARA P.O., TRICHUR.

3. **THE CONTROLLER, KERALA**
   AGRICULTURAL UNIVERSITY, VELLANIKKARA P.O.,
   TRICHUR.

4. **THE DEPUTY CONTROLLER, KERALA**
   AGRICULTURAL UNIVERSITY, VELLANIKKARA P.O.,
   TRICHUR.

BY ADV. SRI.N.D.PREMACHANDRAN, SC, AGRL.UNTY.
SMT.A.G.ANEETHA, S.C.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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W.P.(C) NO.5474/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER NO.GA-15948/A3/88(ii) DT. 15.3.90.

EXT.P2:- COPY OF THE ORDER GA/A3/30770/92 DT. 3.2.98.

EXT.P3:- COPY OF THE RELIEVING ORDER OF THE PETITIONER FROM SERVICE VIDE FILE NO. A/A3/24878/01 DT. 28.5.02.

EXT.P4:- COPY OF THE ORDER N O.PEN B1-161230/02 DT. 3.12.03 ISSUED BY THE DEPUTY CONTROLLER OF THE AGRICULTURAL UNIVERSITY.

EXT.P5:- COPY OF THE REPRESENTATION DT. 12.1.04 SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT.

EXT.P6:- COPY OF THE JUDGMENT DT. 28.3.03 IN OP. NO.22076/2000 HONOURABLE COURT.

EXT.P7:- COPY OF THE ORDER NO.GA/A3/23017/90 (i) DT. 17.4.95.

EXT.P8:- COPY OF THE ORDER NO.GA/J1/20464/99 DT. 15.4.2000 ISSUED BY THE UNIVERSITY.

EXT.P9:- COPY OF THE SENIORITY LIST OF ASSISTANT ENGINEERS, ASST.EXECUTIVE ENGINEERS, AND EXECUTIVE ENGINEERS IN CIVIL, MECHANICAL AND ELECTRICAL WING AS ON 1.1.2000.

/TRUE COPY/

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K.BALAKRISHNAN NAIR, J.

W.P.(C).No. 5474 of 2004-B

Dated this the 22nd day of August, 2007.

J U D G M E N T

The petitioner retired from the service of the Kerala Agricultural University while working as Assistant Executive Engineer, on 31-5-2002. He joined service in 1976. He was promoted as Assistant Engineer provisionally by Ext.P1 order dated 15-3-1990 with effect from 16-9-1985. He was promoted as Assistant Executive Engineer with effect from 14-3-1986. Still later, he was promoted as Assistant Executive Engineer Higher Grade by Ext.P2 order dated 3-2-1998. While working in that post, he retired from service on 31-5-2002. The promotions were ordered based on Ext.P7 decision of the University dated 17-4-1995. Based on a common seniority list of Engineers irrespective of the branch to which the incumbent belonged, promotions were ordered. After his retirement, audit objections were raised against such promotion. By Ext.P4 it was found that an excess amount of Rs.1,36,429/- has been drawn by the petitioner. The excess amount was later revised as Rs.1,40,159/-. After deducting the said amount the petitioner was paid only Rs.59,222/- as gratuity. This writ petition is filed challenging Ext.P4. The petitioner submits, even assuming that there is excess payment, recovery can relate back only to a period of 4 years preceding to the date of retirement by virtue of Rule 3C of Part III KSR. In support of this submission, reliance is placed on the Division Bench decision of this court in **Principal Secretary to Government Vs. Gopala (2005 (4) KLT 190)**.

(2). The respondents have filed a counter affidavit supporting recovery made from the DCRG of the petitioner. The petitioner has filed a reply affidavit also.

(3). Heard the learned counsel on both sides. Rule 3C of Part III KSR reads as follows:

> "3C.Notwithstanding anything contained in these Rules, recovery of excess payments made to an Officer by mistake within a period of four years before his retirement and which are detected within a period of four years after retirement may be made from his pension and other amounts due to him after retirement subject to the condition that such deduction if made from his pension shall be effected only in monthly instalments in whole rupees and that the amount of each instalment shall not exceed 10 per cent of the monthly pension admissible to him."

(4). It is not in dispute that recovery is ordered within 4 years of his retirement. But recovery of excess amount paid from 1995 is sought to be made now. Going by the above Rule, recovery can be made only with effect from 1-6-1998. As contended by the petitioner, the point is covered by the above-said Division Bench decision of this court. Accordingly, Ext.P4 is quashed to the extent it attempts to recover excess payment made to the petitioner upto 31-5-1998. So, the liability of the petitioner shall be re-computed and the recovery shall be confined to the excess payment made to him from 1-6-1998 to 31-5-2002. The second respondent shall pass fresh orders in the matter, in the light of the above directions, within two months from the date of production of a copy of this judgment and the balance amount found due to the petitioner shall be released to him, within one month thereafter.

The Writ Petition is disposed of as above.

K.BALAKRISHNAN NAIR, JUDGE.

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